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2d Session
HOUSE OF REPRESENTATIVES
REPT. 98–645
Part 2

FIRST CONCURRENT RESOLUTION ON THE BUDGET--FISCAL YEAR 1985

APRIL 3, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PEPPER, from the Committee on Rules, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H. Con. Res. 282]

The Committee on Rules, to whom was referred House Concurrent Resolution 282, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution do pass.

I. INTRODUCTION AND BACKGROUND

Jurisdiction of the Committee on Rules Over Budget Enforcement Procedures

During the last few years, the first budget resolution has been used as the vehicle for enactment, on an ad hoc basis, of novel and far reaching budget enforcement procedures affecting the rules of the House.

These procedures, including for example reconciliation instructions in a first budget resolution and an automatic second budget resolution, have drastically altered the Budget Act and significantly affected the operations of almost every committee of the House.

Clause 1(q) of rule X vests in the Committee on Rules legislative jurisdiction over all matters affecting the rules of the House, the joint rules, and the order of business. In addition, the Committee on Rule reported the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) and therefore possesses jurisdiction over budget procedures inserted in a first budget resolution not specifically authorized by the Budget Act, that affect the operation of the act or of the rules of the House.

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The Rules Committee may properly assert this jurisdiction, as it has in the present instance, by seeking and receiving a sequential referral of a first budget resolution for purposes of considering rule-making provisions contained in it. Clause 5 of rule X requires sequential and other multiple referrals when appropriate "to assure to the maximum extent feasible that each committee which has jurisdiction under clause 1 over the subject matter of any provision thereof will have responsibility for considering such provisions and reporting to the House with respect thereto."

It should be noted that provision of the rules of the House relating to the budget process were enacted into law as part of the Congressional Budget Act on July 12, 1974. However, the Committee Reform Amendments of 1974 (H. Res. 988, 93d Congress), which is the source of the multiple referral rule, was adopted later, on October 8, 1974. There can be no question that, to the extent the rule might be viewed as divergent from the provisions of the Congressional Budget Act, the former should be regarded as controlling. The language of the 1974 amendment to the rule specifically provided:

> Any precedents, rulings, and procedures in effect prior to the Ninety-Fourth Congress shall be applied with respect to reference under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

In its Report on the First Concurrent Resolution on the Budget for Fiscal Year 1984 (H. Rept. 98–41, Part II), the Rules Committee explained the authority usually cited by the Budget Committee for including procedural changes in the first budget resolution. These provisions include section 301(a)(7), providing that the first budget resolution may include such other matters relating to the budget as may be appropriate to carry out the purposes of the act, section 301(b)(1), providing that a first budget resolution may contain language deferring enrollment of all or certain spending bills under certain circumstances, and section 301(b)(2), which provides that the resolution may require any other procedure which is considered appropriate to carry out the puposes of the act.

That there are limits as to how far into the rules of the House the Committee on Budget may venture under this authority is quite obvious. As no point of order has ever tested the committee's privilege to report, a demarcation line remains undrawn.

The committee would suggest however, that the Congressional Budget Act itself is clearly beyond any imaginable line. The authority to report these "procedures" derives only from the act. In this regard, the committee notes that section 904 of the act states that all of its procedural provisions are enacted "with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House."

The "manner" in which rules may be changed was settled at least as early as 1879[1]:

> It was established in practice, even when a rule suggested otherwise, that a proposition to change the rules, in order to be agreed to by majority vote, should be referred to and reported by the Committee on Rules.

[1] V. Hinds' Precedents § 6772.

Further, it is important to note that, even to the extent that section 301(b)(2) of the act confers certain limited authority to report on procedures subsidiary to the act, such authority does not confer jurisdiction. That the actual jurisdiction continues to reside solely with the Committee on Rules is settled. The committee has, without exception, received referral of all bills and resolutions paralleling the kind of provisions included in a concurrent resolution on the budget pursuant to section 301(b)(2) of the act. Further, the committee sought and received a sequential referral of the first budget resolution for fiscal year 1984 and again sought and received a sequential referral of this first budget resolution for fiscal year 1985.

II. OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI, this section contains the committee's findings regarding the formulation and implementation of ad hoc enforcement procedures in the House of Representatives. During the 98th Congress, the committee has exercised its oversight responsibility regarding the congressional budget process through the Task Force on the Budget Process, chaired by Representative Anthony C. Beilenson. The task force has completed its work and will issue a comprehensive report on congressional budgeting, including legislative recommendations, during the next few months. For this reason, this report will be confined to a few observations directly related to the establishment of new budget enforcement procedures, on an ad hoc basis, in budget resolutions.

Erosion of Budget Enforcement Procedures

Every first concurrent resolution on the budget beginning with the first budget resolution for fiscal year 1981 (H. Con. Res. 307) has included new budget enforcement procedures affecting the rules of the House. House Concurrent Resolution 282, the first budget resolution for fiscal year 1985, as reported by the Committee on the Budget provides procedures including a new point of order and limitations on existing points of order.

The Committee on Rules believes that this practice endangers the Congressional Budget Act of 1974 and blunts the tools provided therein for Congress to enforce spending and revenue levels set forth in the budget resolution. The committee believes that enforcement procedures will inevitably be weakened if they are changed each year in a legislative vehicle, like the budget resolution, that is so sensitive to the political pressures of the day. The committee also believes that the major importance of a budget resolution is the fiscal policy it sets out and the budgetary priorities it establishes. Attention is, and should be, focused on such matters in Budget Committee deliberations and on the floor of the House. The danger is that if procedural changes are included in a resolution, they may not, and in the opinion of this committee, have not received due consideration.

The consequences of this lack of attention are unfortunate but foreseeable. Hastily conceived provisions are adopted without benefit of consultation. Sometimes the new mechanisms do not work as they were intended. Also, unnecessary ill-will and controversy are provoked

when members discover, too late, that normal privileges and procedures will be changed.

The committee finds distressing patterns in the history of changes included in budget resolutions. Some procedures have been modified erratically and then dropped. Some resolutions have included several new procedures which are not made consistent with one another. Finally, some resolutions have included new procedures in conflict with existing rules.

Erratic Modification: The Case of Deferred Enrollment.—The erratic modification pattern is best illustrated by the introduction, adjustment and eventual disappearance of the deferred enrollment procedure. A bill that has been passed in identical form by both Houses must be enrolled before it is sent to the President to be signed into law. An enrolled bill is printed on parchment, certified by an officer of the House of origin (House Clerk or Senate Secretary) and signed by the House Speaker and Senate President. Deferred enrollment is a procedure by which a bill that has been passed by both Houses is held at the Clerk's or Secretary's desk before being enrolled.

The Budget Act contemplated a deferred enrollment procedure. Specifically, section 301(b)(1) permits a budget resolution to require that all or certain spending measures shall not be enrolled until the mandatory second resolution is adopted and, if directed, action on reconciliation is completed. The idea behind this is to allow Congress, in September, to compare its previous actions with the totals it adopts in the second budget resolution. Section 310(c) gives Congress the ability to change the bills awaiting enrollment. Congress can approve a reconciliation resolution instructing the House Clerk or the Senate Secretary to make specific changes in those bills.

Section 301(b)(2) permits a budget resolution to require any other procedure considered appropriate to the purposes of the Budget Act. Under this authority, a budget resolution that activates deferred enrollment may also specify under what conditions "certain" bills will be held. Those conditions have been different in each of the 4 years that deferred enrollment has been in effect.

The first budget resolution for fiscal year 1981 was the first budget resolution to require deferred enrollment. It stated that no measure:

providing new budget authority for fiscal year 1981 which exceeds the appropriate section 302(a) allocation or 302(b) subdivision, or

providing new entitlement authority first effective fiscal year 1981 which exceeds the appropriate section 302(a) or (b) level, or

reducing revenue by more than $100 million,

would be enrolled until the second resolution was adopted and action on reconciliation completed. There were specific exceptions made in the provisions of the budget resolution excluding conference reports filed before the budget resolution was adopted and any measure reducing revenues from the Crude Oil Windfall Profits Tax Act of 1980.

For fiscal year 1982, the first budget resolution, House Concurrent Resolution 115, required deferred enrollment only for measures providing new budget authority or new entitlement authority exceeding the appropriate section 302(a) or (b) level. There is no mention of revenue measures or of exceptions.

For fiscal year 1983, section 4 of the first budget resolution, Senate Concurrent Resolution 92, said that no measure:

providing new discretionary budget authority exceeding the appropriate section 302(a) (or (b) level, or

providing new budget authority exceeding the appropriate section 302(a) or (b) level, or

providing new entitlement authority exceeding the appropriate section 302(a) or (b) level,

shall be enrolled until the second budget resolution is adopted. Section 7 stated that, for purposes of section 4 and for certain other purposes, if no second budget resolution is adopted by October 1 then the first resolution will become the second. A specific exception was made for any self-financed trust fund which increases its revenues. For such accounts, new revenues count as new budget authority.

For fiscal year 1984, the deferred enrollment procedure works differently in the House than in the Senate. In the House, no measure:

providing new discretionary budget authority or new entitlement exceeding the appropriate section 302(a) allocation,

shall be enrolled until the second resolution is adopted or October 1, whichever comes first. In the Senate, deferred enrollment is triggered by excessive new budget authority or new entitlement authority.

In the history of deferred enrollment only two measures have actually been held at the enrolling desk. Neither one was changed by a reconciliation resolution. In the 96th Congress, H.R. 3765 was subject to deferred enrollment. As reported from the House Agriculture Committee on September 3, 1980, the bill dealt with marketing orders for walnuts and olives; there was no budget problem with the bill. The House approved the bill, the rules suspended, on September 15, 1980. On October 1, the Senate amended and passed the bill. The House agreed to the Senate amendments under suspension of the rules on November 17, 1980. Because of the the Senate amendments, the bill provided more new entitlement authority than was allocated to the committee. The bill was held at the enrolling desk until November 20 when the second budget resolution was adopted. It was then sent to the President. It was enacted December 3, 1980 (Public Law 96–494).

The second bill held at the enrolling desk was H.R. 3499 (S. 921), the Veterans' Program Extension and Improvement Act of 1981. It passed in the House under suspension of the rules on June 2, 1981. In the Senate it passed, as amended, on June 16. The House agreed to Senate amendments with amendments on October 2, 1981. The Senate agreed to House amendments on October 16. The bill exceeded the section 302(b) subdivision of the Veterans' Affairs Committee allocation of new entitlement authority. As such, it would be subject to deferred enrollment until the second resolution was adopted. (The second resolution was not adopted until December 10, 1981.) However, the committee allocation had not been breached and the committee refiled their section 302(b) subdivisions curing the problem. The bill was held at the desk from October 16 until the committee refiled on October 21, 1981. The President signed the bill into law, Public Law 97–72, on November 3, 1981.

In House Concurrent Resolution 282, the first concurrent resolution on the budget for fiscal year 1985, as reported by the Budget Committee, there is no provision for deferred enrollment. The case of deferred enrollment, in which Congress adopted four successive versions of a procedure with no apparent regard for effectiveness or consis-

tency, is a classic example of the flaws inherent in enacting budget enforcement procedures in budget resolutions.

Internal Inconsistency: Credit Enforcement and the Automatic Second Budget Resolution.—The attempt to enforce aggregate credit levels set out in the fiscal year 1983 first budget resolution exemplifies the pattern of internally inconsistent procedural changes in a budget resolution. It also illustrates a new mechanism that did not work as intended. The first budget resolution for fiscal year 1983 (S. Con. Res. 92) included a separate credit budget for fiscal year 1983.

At this point it may be helpful to explain the rationale for a separate credit budget. The unified budget includes budget authority and outlays associated with direct loans made by on-budget agencies. But this understates the level of federal credit activity for four reasons. First, all off-budget direct loans are excluded. Second, all loan guarantees are excluded except when cash payments are made to cover a default. Third, the outlays scored against direct loans is a net figure. Net direct loan outlays equal new loan disbursements less repayments and other financial transactions (e.g., liquidation of collateral, loan write-offs and sales of loan assets). Fourth, roughly 90 percent of all direct loan activity is funded by revolving funds of new budget authority is usually not required to maintain large levels of credit activity.

Unlike the unified budget, the separate credit budget is not a cash flow budget; instead, it indicates the volume of Federal credit activity. The credit budget measures loan activity at the point at which the Federal Government becomes legally bound to extend credit. Direct loans are scored when the loans are obligated and loan guarantees are scored when the government is committed to guarantee the loan; those are the actions that most lend themselves to control. In some programs there are long delays between the time the direct loan is obligated and the time the loan is actually disbursed; for example, on average, loans to rural electric cooperatives are disbursed seven years after they are obligated.

Returning to our discussion of the fiscal year 1983 resolution, it included a new point of order; this was an enforcement procedure intended to protect the aggregate levels of direct loans and of loan guarantees set in the resolution. The point of order was to be effective after adoption of the second resolution for fiscal year 1983. It was intended to lie against any measure that, in combination with previously adopted legislation, would provide credit authority exceeding the total levels in the credit budget. However, another provision of the budget resolution allowed the first budget resolution to serve as the second resolution for certain purposes. The credit enforcement point of order was not listed among those purposes. In fact no second resolution was adopted. The first budget resolution did serve as the second and since the credit enforcement point of order was not made effective by the automatic second resolution procedure, it was prevented from taking effect.

Tensions Between a New Procedure and an Existing Rule: The Pay-As-You-Go Provision of Section 3 of the Resolution and Section 311 of the Congressional Budget Act of 1974.—The pay-as-you-go procedure is embodied in section 3 of the concurrent resolution on the

budget for fiscal year 1985, as reported by the Committee on the Budget. Subsection (b) states that, notwithstanding the overall spending and revenue targets set elsewhere in the resolution, new or increased funding for certain programs is appropriate if such programs are authorized by law and if matching revenues or savings in other programs are also enacted. This provision would operate in the following way. Assume that, after October 1, Congress is close to the ceiling it has set on budget authority and outlays. If Congress is willing to raise the necessary taxes, it can approve further spending for specified programs. Or so it would appear from section 3(b). However, according to section 311 of the Congressional Budget Act, a point of order lies against consideration of any measure which, in conjunction with previous congressional action, would breach the levels of budget authority or outlays set in the second budget resolution. After October 1, the first resolution is deemed to be the second resolution for purposes of section 311 of the Budget Act.

In adopting this provision the Committee on Budget appears to be announcing a new policy that it will support waivers of section 311 points of order on spending in cases where Congress will take corresponding action on revenues. The Committee on Rules adopts no such policy. Under existing rules, the point of order protecting aggregate levels of budget authority, outlays and revenues is the primary tool for budget control. That tool may need sharpening and refinement. For example, the Rules Committee Task Force on the Budget Process has recommended focusing the section 311 point of order at the place where Congress has most control, e.g., on committee allocations of discretionary budget authority. But until Congress replaces section 311 with a new set of tools, the Committee on Rules will not easily provide a waiver. The committee will grant waivers only under extraordinary and unanticipated circumstances.

Future Action

The committee has continually taken the position that maintaining and improving congressional fiscal discipline is of paramount importance both because such discipline is necessary to improve the Nation's economic health, and because the exercise of Congress' constitutional responsibilities depends upon an effective congressional budget. In addition, the committee believes that, at least until a comprehensive revision of the Budget Act is enacted, the House of Representatives must retain the flexibility to adopt such new budget procedures as may be necessary. However, the committee now believes that the present system for modifying budget enforcement procedures through budget resolutions has not worked well. This year's budget resolution, as reported by the Budget Committee, again contains new procedures, including the trust fund exemption contained in section 6 of the resolution. Also, as explained above, there are potential conflicts between the various enforcement provisions included in House Concurrent Resolution 282 and the Congressional Budget Act. No hearings were held on the new procedures included in this year's resolution. Nor, apparently, has there been investigation into whether or not the somewhat different set of procedures included in the first budget resolution for fiscal year 1984 proved to be successful or appropriate.

The committee recognizes the difficult position of the Budget Committee in attempting to recommend appropriate budget enforcement procedures and gain compliance with them. However, the Rules Committee has ultimate responsibility in the House for budget procedures, for the Congressional Budget Act and for the proper working of the committee system established in rule X of the Rules of the House. In view of the vital importance of speedy action on a budget resolution, the Rules Committee has once again elected to stand behind the Budget Committee and report the resolution and its procedures favorably to the House without amendments. However, the committee wishes to state that during the next 12 months, the Rules Committee itself will monitor the operation of the budget procedures contained in the budget resolution for fiscal year 1985. This investigation may involve hearings at which all Members of the House who are affected by these procedures will have an opportunity to testify. It is the intention of this committee to ensure that any procedures included in next year's resolution are formally and fully considered before the House and that the Rules Committee itself obtain a referral of the budget resolution for a period of time sufficient to allow a proper review of the proposed procedures and the adoption of amendments to such procedures should that prove necessary.

III. SECTION-BY-SECTION ANALYSIS OF PROCEDURAL CHANGES INCLUDED IN THE FIRST CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1985

Reconciliation instructions.—Section 2 of House Concurrent Resolution 282 contains reconciliation instructions directing specific House committees to report, by May 1, legislation to achieve savings in programs under their jurisdiction.

Eight House committees received such instructions: Agriculture, Armed Services, Education and Labor, Energy and Commerce, Post Office and Civil Service, Small Business, Veterans' Affairs, and Ways and Means. The committees are directed to meet targets for fiscal year 1985 and the resolution also recommends levels for fiscal year 1986 and fiscal year 1987. The three year total in outlay savings would be $12.35 billion.

The committee amendment adds instructions to the Committee on Ways and Means to report legislation raising $9.7 billion in revenue in fiscal year 1985. Advisory revenue levels are included for fiscal year 1986 and fiscal year 1987 for a 3 year total of $49.8 billion.

Pay-as-you-go procedure.—Section 3(a) of House Concurrent Resolution 282 states that any revenue for fiscal year 1985, 1986 or 1987 raised by measures enacted after March 15, 1984 shall be used to reduce deficits unless the revenue-raising acts also earmark the funds for specific purposes.

Section 3(b) of House Concurrent Resolution 282 states that funding increases for certain low-income assistance programs are appropriate, notwithstanding the aggregate levels set forth elsewhere in the resolution, so long as the relevant authorizations are enacted and the deficit is not increased. In other words, spending increases are allowed as long as sufficient revenue is raised and earmarked for those pro-

grams pursuant to subsection (a) or sufficient savings are found in other spending programs to match the increases.

Automatic Second Budget Resolution and Committee Allocation Immunity.—Section 5(a) of House Concurrent Resolution 282 states that if Congress does not complete action on a second budget resolution by October 1, 1984, this first budget resolution will be deemed the second for purposes of section 311 of the Congressional Budget Act. Section 311(a) states that a point of order lies against any measure that, in conjunction with other measures adopted by Congress, would breach the aggregate levels of spending or revenue set forth in the second budget resolution. In other words, section 5(a) of House Concurrent Resolution 282 makes the section 311 point of order effective on October 1, based on levels set in House Concurrent Resolution 282, if Congress has not adopted a second budget resolution by that time.

Section 5(b) automatically waives the point of order made effective by subsection (a) if the legislation is reported by a committee that has not exceeded its own allocation of discretionary budget authority or new entitlement authority. In other words, a committee that lives within its means will not be subject to constraint even if the spending ceiling or revenue floor is breached by other committees.

Section 5(c) states that the section is no longer effective whenever a second budget resolution for fiscal year 1985 is adopted.

Trust Fund Exemptions.—Section 311 of the Budget Act provides, among other things, a point of order against consideration of spending legislation whose enactment would cause the binding ceilings set in the most recently agreed to budget resolution to be exceeded. Section 5 of this resolution, as noted above, makes section 311 effective after October 1 and provides an exception for spending bills which would breach the ceiling but are within the reporting committee's section 302(a) allocation of discretionary spending. Section 6(a) of the resolution provides that new discretionary budget authority and new spending authority for highway, mass transit or aviation purposes, derived from 90 percent self-financed trust funds for which user fees or taxes were increased in the 97th Congress shall be disregarded in determining whether a committee is within its section 302(a) discretionary action allocation. Trust fund spending adopted by Congress will, however, be considered in determining whether all congressional spending action stays within the overall section 311 ceilings. If a committee has exceeded its allocation and reports a new spending measure, previously adopted trust fund spending will count for purposes of determining whether a section 311 point of order applies.

Section 6(b) provides a similar exemption for spending derived from Superfund trust fund. A proviso is added. Superfund spending is "disregarded" only to the extent that new or existing revenue matches the additional spending.

Section 302(b) filing requirement.—Section 7(a) creates a new point of order. The point of order would lie against any measure providing new budget authority, new entitlement authority or new credit authority if such measure is within the jurisdiction of a committee that has not filed its section 302(b) subdivision. Under section 302 of the Congressional Budget Act, committees receive an allocation in the conference report on a budget resolution. As soon as practicable after the budget resolution is adopted, each committee must subdivide its allocation among programs or subcommittees. At present, most committees

promptly report such subdivisions. It is the failure to report such subdivisions that will make some measures vulnerable to a point of order under the new provisions.

Section 7(b) states the point of order is not effective until 21 days of continuous session after Congress adopts the budget resolution.

IV. RULES COMMITTEE VIEWS REGARDING THE PROCEDURES INCLUDED IN HOUSE CONCURRENT RESOLUTION 282

Reconciliation Instructions.—The Congressional Budget Act, in section 310, provides for reconciliation instructions to be included in a second budget resolution. The goal of such reconciliation instructions is to change levels of spending and revenue that result from existing law and from previously considered spending bills and resolutions.

In 1980, after summit meetings among Members of Congress and representatives of President Carter, the decision was made to include reconciliation instructions in the first budget resolution for fiscal year 1981. This decision was based on the need for speedy, resolute action to reduce deficits. The reconciliation instructions in the first budget resolution for fiscal year 1981 were directed to the Committees on Appropriations to reduce spending for fiscal year 1980. Reconciliation instructions have been included in every first budget resolution since then. The instructions have been directed to committees other than the Committees on Appropriations to change entitlement and other programs under the jurisdiction of those other committees.

The Rules Committee participated in the initial decision to include reconciliation instructions in the first budget resolution and continues to approve the procedure in the light of the unprecedented deficits this nation faces. Furthermore, the Rules Committee commends the Committee on the Budget for its efforts in developing reconciliation and for its participation in informal arrangements to prevent other changes to the reconciliation process (for example, for refraining from instructing committees to report changes in policy without direct budgetary impact).

The pay-as-you-go provision of section 3.—As noted in the oversight findings, the committee is apprehensive about section 3(b) which apparently permits increases above the total level of budget authority and outlays set in the resolution so long as matching revenues are found. This provision could conflict with section 311 of the Congressional Budget Act.

While the concept of "paying as you go" is exciting and potentially of great help in addressing the deficit question, it should be noted that a rule allowing unlimited expenditures so long as they are coupled with tax increases would focus control on the estimated deficit figure, not on budget authority, outlays or revenue. Congress has direct control over budget authority, but it only indirectly controls outlays and revenue. The estimated deficit figure is the difference between the outlays expected to flow from the Treasury during the next fiscal year and the revenue expected to be collected. Thus, the estimated deficit is the least controllable figure among the aggregates set in a budget resolution. That is one reason to base budget enforcement on aggregates such as budget authority more under the control of Congress, as does section 311 of the Congressional Budget Act.

Automatic Second Resolution and Committee Allocation Immunity.—This provision was also made in the first budget resolution for fiscal year 1984. The automatic second resolution procedure first appeared, without committee allocation immunity, in the first budget resolution for fiscal year 1983.

These provisions reflect the sense of Congress that a second budget resolution is impractical despite the mandate of section 310 of the Congressional Budget Act. The committee believes this procedure to be sound; however, the committee repeats its earlier warning that to open budget enforcement procedures to annual change within the budget resolution is a dangerous practice.

Trust Fund Exemptions.—In 1967, the President's Commission on Budget Concepts recommended a unified budget which includes current expenditures from trust funds as well as those from general revenues. This recommendation was adopted. Recently, Congress has, in a few select cases, reconsidered the budgetary treatment of trust fund expenditures and earmarked or dedicated revenue into the trust fund. The most notable instance is the social security amendments of 1983 (Public Law 98–21) which will remove the old age and survivors insurance trust fund, the disability insurance trust fund, and the hospital insurance trust fund from the unified budget after October 1, 1992. Net outlays from those three trust funds equalled more than 25 percent of total (on- and off-budget) outlays for the Federal Government in fiscal year 1983, $210.7 billion out of $803.3 billion.

Section 6 of the budget resolution under consideration would exempt some other largely self-financed trust funds from certain budget enforcement procedures in fiscal year 1985. The argument for special treatment is straightforward; Congress has already dedicated the money for these special purposes and new concerns should not affect the level of spending.

The argument against special treatment for trust funds should also be noted. The committee believes that one exception encourages others. If these financing mechanisms escape budget scrutiny, every Member will want his favorite program to be treated in the same way. But only in some cases is there a natural link between trust fund financing and the aims of the program. Social security is a paradigm case; a trust fund is the appropriate financing mechanism for a program of this nature. However, in other cases a trust fund is preferred only because it strengthens the case for funding.

The point of these comments is to note the unresolved controversy that underlies the trust fund exemptions. The committee recognizes the need to make good on promises made when increased revenue into the trust funds was adopted. The committee, however, that the budget itself should reflect this decision, not the adoption of new enforcement provisions. If increased spending is appropirate it should be assumed in the overall spending levels, not made possible by procedural exemptions. Because the provisions in the budget resolution affect only fiscal year 1985, the committee can approve this section. The committee believes that new budget enforcement procedures for trust funds should be adopted only after careful review and, because the procedures in a budget resolution do not receive the attention given fiscal policy and budget priorities, a budget resolution is not the appropriate place for such provisions.

V. COMMITTEE ACTION

On Tuesday, April 3, 1984, the Committee on Rules conducted a hearing on House Concurrent Resolution 282, the first concurrent resolution on the budget for fiscal year 1985. That resolution was reported by the Committee on the Budget on March 31, 1984, and sequentially referred to the Committee on Rules for a period ending not later than April 3, 1984.

The committee heard testimony from Representative Jones and Representative Latta, the chairman and ranking minority member of the Committee on the Budget, respectively, and from other interested Members of the House.

On the motion of Representative Long, the committee, with a quorum present, ordered House Concurrent Resolution 282 reported, without amendment, with the recommendation that it pass.

VI. COMMITTEE VOTE

Clause 2(l)(2)(B) of rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to be reported by a recorded vote, to include the total number of votes cast for and against the reporting the measure.

House Concurrent Resolution 282 was considered by the committee on April 2, 1984, and was ordered to be favorably reported, without amendment, by voice vote, a quorum being present.

VII. OTHER MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

Comparative Print

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain comparative print indicating changes in the existing rules.

Although the concurrent resolution would make changes in the rules of the House, it would do so in a concurrent resolution and in a manner that does not directly amend the Rules of the House of Representatives. The committee believes that the narrative discussion, under the section of this report entitled "Section-by-Section Analysis of Procedural Changes included in the First Concurrent Resolution on the Budget for Fiscal Year 1985," adequately meets the informational needs contemplated by clause 4(d) of rule XI.

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Clause 2 of rule XII requires the report of each committee on a bill or joint resolution to contain a comparative print relating to the measure.

The concurrent resolution makes no changes in existing law.

Congressional Budget Office Estimates

Clause 2(l)(3)(B) of rule XI requires each committee report to contain any statement required by section 308(a) of the Congressional Budget Act of 1974.

That section does not apply to this resolution.

Clause 2(l)(3)(C) of rule XI requires each committee report to contain any cost estimate and comparision prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

That section does not apply to this resolution.

Committee Cost Estimate

Clause 7(a) of rule XI requires certain committee reports to contain committee cost estimates.

That provision does not apply to the Committee on Rules.

Inflation Impact Statement

Clause 2(l)(4) of rule XI requires each committee report to contain a statement relating to the inflationary impact of the enactment of that measure.

That section does not apply to this resolution.

Oversight Findings and Recommendations of the Committee on Rules

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X.

The committee exercises oversight for the rules of the House and the operation of the budget process.

The committee's oversight findings on budget enforcement procedures can be found in the section entitled "Oversight Findings."

Oversight Findings and Recommendations of the Committee on Government Operations

Clause 2(l)(3)(D) of rule XI requires each committee report to contain any oversight findings and recommendations made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X.

No such findings and recommendations have been received.

Advisory Committees

Section 5(b) of the Federal Advisory Committees Act (Public Law 92–463), enacted as an exercise of the rulemaking power of the House, requires the report accompanying any bill or joint resolution to contain certain findings of the committee with respect to any advisory committee established by the legislation.

House Concurrent Resolution 282 creates no advisory committee, within the meaning of the rule.

Additional Views by the Honorable Anthony C. Beilenson on House Concurrent Resolution 282

Once again the Members of the House of Representatives are facing action on a concurrent resolution on the budget that contains pro-

visions which temporarily amend the Budget Act and change the procedures by which Congress attempts to establish control over the Federal budget. As chairman of the Rules Committee Task Force on the Budget Process, which has been reviewing our budget procedures, I am troubled that we are being asked once again to alter the budget process in this ad hoc and piecemeal manner.

House Concurrent Resolution 282, as reported by the Committee on the Budget, would effectively amend the Budget Act by:

Including reconciliation directives in a first budget resolution (the Budget Act provides for reconciliation only in conjunction with a second budget resolution);

Including a "pay as you go" provision which states that revenues which result from legislation enacted after March 15, 1984, should be used only to reduce deficits unless the legislation earmarks the revenues for spending programs (several spending programs are apparently earmarked in advance by this provision);

Providing that, if Congress has not adopted a second budget resolution by October 1, the first resolution shall be considered the second resolution for the purposes of section 311 of the Budget Act (the control on total spending and revenues);

Providing that, if an automatic second resolution is in effect, legislation will be subject to a section 311 point of order only if the committee reporting the legislation has exceeded its section 302(a) allocation (the allocation of total budget authority and outlays among the committees of Congress);

Providing that certain specified spending amounts are to be disregarded for the purposes of determining overall spending and determining whether a committee has exceeded its section 302(a) allocation; and,

Providing that legislation cannot be considered in the House if the committee which reported the legislation has not filed its section 302(b) subdivision (the subdivision of a committee's spending allocation among its subcommittees or programs).

I happen to believe that some of these changes are desirable and some are not. With respect to some of them, there is not enough information to judge what the effect would be. But totally aside from the merits of these provisions, it is unfortunate that we continue to make significant changes in the budget process in this manner.

Two years ago the Committee on Rules established a task force on the budget process to review the problems that had developed in that process since the adoption of the Budget Act of 1974, and to recommend changes to rectify those problems. One of the problems that most troubled Members of the House and prompted establishment of the task force was the manner in which the budget process has been changed since 1974.

Substantial changes have been made in the way Congress establishes and enforces a budget, but these changes have not resulted from a process which allows careful consideration and maximum participation by interested Members. Rather, they have resulted, as they will again this year, from provisions included in budget resolutions pursuant to section 301(b)(2) of the Budget Act (the "elastic clause"), which allows the Committee on the Budget to include in a resolution

"any other procedure which is considered appropriate to carry out the purposes of this Act."

These provisions have often been added to a budget resolution in the final moments of the Budget Committee mark-up. Interested committees and Members of the House have often had little, if any, opportunity to review and comment on such provisions before they are included in the resolution. Because attention is properly focused on the substantive content of the budget resolution when the resolution is being marked-up in committee and debated on the floor of the House, little consideration is given to changes in procedure which in fact have had profound effects on the workings of the House of Representatives.

In short, these important changes in congressional budget procedures have resulted from a process guaranteed to inhibit an adequate review of the changes and to frustrate and confuse Members and committees who will be affected by them.

I appreciate the fact that Chairman Jones and Representative Panetta of the Budget Committee have made sincere efforts the last 2 years to review possible changes with other committees and Members, but their best efforts cannot overcome this inherently flawed process of making procedural changes through use of the "elastic clause."

Major changes in the budget process should be made only after careful review and full consideration. Many proposed changes are extremely technical in nature. A quick review is likely to lead to adoption of procedures which have unintended consequences. And, because different committees and different programs operate in disparate manners, proceduers which work well for one committee or program may create great difficulty for another without providing for the desired budgetary control. Therefore, it is imperative that any process for considering procedural changes should provide an opportunity for all interested parties to participate, and enough time for adequate review of changes. It is inherently unlikely that such careful and full consideration can occur in conjunction with the development, mark-up, and adoption of a budget resolution.

Consideration of changes in the budget process more appropriately takes place apart from that process itself. I also believe that such consideration more appropriately takes place outside of the Committee on The Budget—either in the Committee on Rules or in a special forum under the aegis of that committee, such as the task force on the budget process. I do not draw this conclusion simply because the Rules of the House place responsibility for changes in the Budget Act within the jurisdiction of the Committee on Rules, but I do believe that the Rules Committee should have jurisdiction over modifications in the Budget Act because it is uniquely situated institutionally to guarantee the careful and full review that such modifications deserve. It is important to remember that the budget process is but one part of the overall business of the House of Representatives. It is also important to realize that this one part significantly affects many other parts. Only the Rules Committee, which has responsibility for all of the rules and order of business of the House, can give the budget process the attention it deserves and keep a perspective on its proper role in the overall functioning of the legislative process.

The Rules Committee is also uniquely situated to ensure that all Members and committees of the House have an opportunity to partici-

pate in the consideration of any changes in the budget process. The Rules Committee deals with all other committees of the House on an on-going basis, learning to appreciate both the problems that face those committees and the expertise that those committees have in dealing with certain areas of legislation. It is no accident that, when the Rules Committee task force on the budget process was established, members from other committees involved in the budget process were invited to serve on the task force.

It is also important to note that the Rules Committee has the institutional responsibility for enforcement of the budget. If legislation violates the Budget Act (or conditions imposed by the budget resolution), the Rules Committee may be asked to grant a rule waiving the points of order against consideration of the legislation. The awareness that controls must ultimately be enforced or waived leads to careful consideration of enactment of those controls. The Rules Committee would want to ensure that no committee could ask for a waiver on the grounds that the control had not been fully considered and has had unanticipated, undesirable consequences. Conversely, having fully and carefully considered a procedure or control (with full participation by other committees) the Rules Committee is less likely to waive a point of order to allow consideration of legislation which violates it.

Having made the case for consideration of budget process changes by the Rules Committee apart from consideration of a budget resolution, I must confess that the Rules Committee has to date been somewhat remiss in meeting its responsibility to keep the budget process functioning smoothly and effectively.

I would point out, however, that the Rules Committee is in the process of fulfilling this responsibility. After 2 years of study, review, and careful consideration, the task force on the budget process has forwarded a proposal to amend the Budget Act to the Rules Committee. I am confident that the Rules Committee will move as expeditiously as possible to perfect this proposal (with an opportunity for all Members of the House to participate) and bring it forward for consideration by the full House.

This is not the appropriate place to discuss the details of that proposal, but I should point out that three of the procedural provisions included in House Concurrent Resolution 282 would be unnecessary under the Budget Act as amended by the task force proposal. There would be no need to provide that the first resolution automatically becomes the second, since the proposal calls for a single binding resolution. The task force proposal also provides for reconciliation in connection with that single resolution and for the exemption from the section 311 point of order if a committee has not exceeded its committee allocation.

I should also point out that two of the procedural matters included in House Concurrent 282, the "pay as you go" provision in section 3 and the "pay as you go trust" fund amendment in section 6, were never considered, or even mentioned in 2 years of hearings and work sessions by the task force. They certainly have not been considered in the careful manner in which changes in the budget process should be considered.

I am particularly concerned about the "pay-as-you-go" trust fund amendment. As I understand it, this provision was added to House

Concurrent Resolution 282 on the final day of the Budget Committee's consideration of that resolution.

Supporters of the Federal highway, mass transit, aviation, and "Superfund" trust fund programs feared that the spending limits included in the budget resolution would preclude increasing spending from these trust funds up to the amounts available from revenues paid into these funds. Those supporters argued that legislation which increased the revenues for those programs carried an implicit promise that those revenues would be used for the purposes for which the trust funds were established. They argued that not allowing for increased spending up to the levels of the increased revenues would constitute a breach of that promise.

The Budget Committee accepted these arguments, but rather than increasing the spending levels in House Concurrent Resolution 282 to match the level of anticipated revenues for those trust funds, the committee adopted the "pay-as-you-go" trust fund amendment.

This amendment states that new spending from these trust funds shall be disregarded for the purposes of spending levels established in the budget resolution and for the purposes of determining whether a committee has exceeded its section 302(a) allocation of discretionary spending. This means that no legislation which provides new spending from these trust funds (up to the level of revenues into the trust fund) can cause a committee to exceed its section 302(a) allocations. Since section 5(b) of House Concurrent Resolution 282 provides that the section 311 point of order (against legislation which would breach the total spending levels set in the budget resolution) shall not apply if the legislation does not cause a committee to exceed its section 302(a) allocation, the "pay-as-you-go" trust fund amendment effectively exempts legislation concerning these trust funds from the section 311 control on spending.

This exemption is unprecedented. Never before has a certain class of legislation been specifically exempted in advance from the control on overall spending. It is easy to imagine, moreover, that having effectively exempted these trust funds from any Budget Act control, we will be asked in the future to accord similar privileges for other classes of legislation.

I certainly do not quarrel with the need to increase spending for highways, mass transit, aviation and hazardous waste cleanups, but the straightforward and honest way to allow for these increases is to make room for them in the budget resolution.

It is very damaging to the integrity of the budget process, and of the Congress, to leave spending that we all support out of the budget resolution, but to allow that spending by exempting it from Budget Act controls.

The inclusion of this "pay-as-you-go" trust fund amendment in House Concurrent Resolution 282 is a perfect example of what is wrong with amending the Budget Act by adding procedural matters to a budget resolution.

I should point out that, despite the reservations that I and other members of the task force have about including procedural changes in a budget resolution, the task force proposal does not eliminate the "elastic clause." The elastic clause is retained because the task force was aware that there are some situations where it is necessary to in-

clude some minor procedural modifications in the budget resolution. The task force retained the "elastic clause" with the hope that it would be used infrequently and only for minor changes. The task force also adopted safeguards to ensure that any such provisions will be considered by the Rules Committee and/or the full House.

I hope that this Congress will adopt the task force amendments to the Budget Act (with any appropriate modifications) so that ad hoc temporary modifications of the budget process will no longer be necessary. I also hope that in the future, whenever changes in the budget process are necessary (and they certainly will be necessary at some point since circumstances change and problems we have not foreseen will arise), those changes will be adopted through a careful and reasoned process.

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